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U.S., Canadian and U.K. Governments Put Additional Pressure on Xinjiang Sourcing and Related Corporate Compliance Programs

Forced labor compliance requirements continue to ratchet up in 2021. The United States, Canada and the United Kingdom last week announced additional measures addressing forced labor concerns relating to products originating from the Xinjiang region of China. A significant number of companies will need to take these measures into account as part of their trade and human rights compliance, although how each company does so will depend on its individual circumstances. The U.S. announcement in particular has an immediate and significant impact on a large number of companies. In this Alert, we discuss these and other related developments.

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U.S. Customs and Border Protection Issues a Broad Withhold Release Order

On January 13, U.S. Customs and Border Protection issued an order detaining cotton and tomatoes grown in the Xinjiang Uyghur Autonomous Region (XUAR) and all products made in whole or in part using that cotton or tomatoes, regardless of where the downstream products are produced. Although WROs typically are specific to individual suppliers, there is precedent for this broader region-wide approach. In May 2018, CBP issued a WRO banning the importation into the United States of all Turkmenistan cotton or products produced in whole or in part with Turkmenistan cotton.

WROs are issued under Section 307 of the Tariff Act. Section 307 of the Tariff Act prohibits importing into the United States “goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part” by convict, forced or indentured labor. According to CBP’s announcement, the January 13 WRO was based on information indicating the use of detainee or prison labor and situations of forced labor. The announcement indicated that CBP had identified the following forced labor indicators through the course of its investigation: debt bondage; restriction of movement; isolation; intimidation and threats; withholding of wages; and abusive living and working conditions.

CBP will detain shipments of goods it suspects of being imported into the United States in violation of Section 307 of the Tariff Act. Importers can export the goods. Alternatively, the goods can be brought into the United States if the importer can demonstrate they were not produced with forced labor.

This is not the first WRO directed at XUAR products. For example, in 2020, several WROs involving XUAR products were issued, including WROs relating to cotton and apparel products. Most recently, on November 30, 2020, a WRO relating to cotton products made by Xinjiang Production and Construction Corps was issued. Leading up to that WRO, there was widespread speculation that a broader WRO covering all XUAR cotton would instead be issued.

In connection with the U.S. government’s increasing focus on XUAR imports, in July 2020, the U.S. Department of State, along with the U.S. Department of the Treasury, the U.S. Department of Commerce and the U.S. Department of Homeland Security, issued a business advisory concerning forced labor risks associated with the XUAR. The advisory contains information to help companies assess XUAR-related forced labor risks, as well as compliance recommendations. Although the advisory is characterized as only being explanatory and not having the force of law, it notes that well-documented and implemented due diligence policies and procedures may potentially be considered as mitigating factors by U.S. authorities in the event businesses inadvertently engage in activity that violates U.S. laws relating to forced labor in supply chains. Accordingly, supply chain compliance policies and procedures should take the advisory into account. For a further discussion of the advisory, see our earlier Alert [here](#).

In 2021, we may see additional U.S. legislation restricting XUAR imports. The Uyghur Forced Labor Prevention Act was passed by the U.S. House of Representatives on September 22, 2020 by a vote of 406-3. That Act, if adopted by the

new Congress and signed by the President, would establish a presumption that goods produced in the XUAR or through certain government programs are produced using forced labor and therefore prohibited from being imported into the United States under the Tariff Act. The Act also would require disclosure by public companies of specified activities with a potential nexus to human rights abuses. For a further discussion of this Act, see our earlier Alert [here](#).

Canada and the United Kingdom Make Parallel Announcements

In a coordinated move, on January 12 (the day before the WRO was issued), Canada and the United Kingdom made parallel announcements concerning measures relating to XUAR products.

Canada announced the following seven measures:

- A prohibition on importing into Canada goods produced wholly or in part by forced labor.

Note that this is not a new prohibition. As part of the United States-Mexico-Canada Agreement (the successor to NAFTA), the Customs Tariff Act and the Schedule to the Customs Tariff were amended effective July 1, 2020 to prohibit the importation into Canada of goods from any country that are produced wholly or in part by forced labor.

- A Xinjiang Integrity Declaration.

Canadian companies (1) sourcing directly or indirectly from the XUAR or entities relying on Uyghur labor, (2) established in the XUAR or (3) seeking to engage in the XUAR will be required to sign a declaration when substantively engaging with the Trade Commissioner Service. In the Declaration, companies must acknowledge (1) they are aware of the human rights situation in the XUAR and the elevated risk it poses and (2) that the Trade Commissioner Service expects Canadian companies and their affiliates active in China to operate (a) in a manner that respects human rights (including with respect to forced labor) and all applicable laws and (b) transparently and in a manner that seeks to meet or exceed international standards such as the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights.

In addition, in the Declaration, companies are required to affirm they have not knowingly sourced, directly or indirectly, products or services from a supplier implicated in forced labor or other human rights violations in the XUAR.

Declarations remain in effect for five years. During that period, the company has an ongoing obligation to report to the Trade Commissioner Service any material changes to statements in its Declaration concerning its business practices pertaining to the XUAR.

- An advisory on XUAR-related entities.

Among other things, the advisory provides due diligence guidance when doing business with XUAR-related entities.

- Enhanced advice to Canadian businesses.

The Trade Commissioner Service is working with partners and private sector stakeholders to assist clients by providing enhanced advice on due diligence and risk mitigation relating to supply chains and forced labor. Since July 2020, new guidelines have been shared across the Trade Commissioner Service network regarding the specific risks that Canadian firms operating in and doing business with China should consider.

- Export controls.
- Increasing awareness for responsible business conduct linked to the XUAR.

Global Affairs Canada will convene discussions with businesses and NGOs to raise awareness about the risks of doing business in the XUAR, with a specific focus on ensuring supply chain integrity.

- A study on forced labor and supply chain risks.

Global Affairs Canada is seeking a comprehensive third-party analysis of areas of exposure to forced labor involving Uyghurs. This analysis is intended to provide further advice on the risks of doing business in the region to support company decision-making and risk mitigation.

In its statement, the U.K. government announced six measures:

- A review of export controls applicable to the XUAR to determine which additional products will be subject to those controls.
- The introduction of financial penalties for “commercial organisations” that fail to meet their statutory obligation to publish an annual modern slavery statement under the U.K. Modern Slavery Act.

In September 2020, the U.K. government published its response to a 2019 public consultation on the Modern Slavery Act. In that response, the government indicated that, as part of its plan to strengthen the Modern Slavery Act, it was considering penalties for failing to publish a, or to publish a compliant, modern slavery statement. For a more extensive discussion of the government’s response to the consultation, see our earlier Alert [here](#).

- Guidance on the risks faced by companies with links to the XUAR and underlining the challenges of effective due diligence.
- Guidance and support for use by U.K. government bodies to exclude suppliers from public procurement when there is evidence of human rights violations in supply chains.

Compliance with the guidance will be mandatory for central government, non-departmental bodies and executive agencies.

- A Minister-led business engagement campaign to reinforce the need for U.K. businesses to take action to address XUAR human rights risks.

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